

AMENDED IN SENATE APRIL 21, 2003

SENATE BILL

No. 620

Introduced by Senator Scott

February 20, 2003

~~An act to amend Section 789 of the Insurance Code, relating to insurance.~~ *An act to amend Sections 787, 10127.10, 10127.13, and 10509.8 of, and to add Sections 789.9, 789.10, 1724, 1749.8, 10127.17, and 10127.18 to, the Insurance Code, relating to insurance.*

LEGISLATIVE COUNSEL'S DIGEST

SB 620, as amended, Scott. ~~Senior insurance: penalties~~ *Annuities: life insurance: required disclosures and prohibited sales practices.*

Existing law imposes a special duty of honesty, good faith, and fair dealing on an insurer, broker, agent, and all others engaged in the transaction of insurance with a prospective insured who is 65 years of age or older, except for specified types of insurance transactions. Under existing law, the Insurance Commissioner is authorized to assess an administrative penalty for the violation of this duty and other provisions relating to senior insurance. *Existing law establishes a 30-day period following the purchase of an individual life insurance policy or an individual annuity contract by a senior citizen during which time the policy or contract may be canceled and all premiums and fees refunded, and requires certain disclosures in that regard.*

This bill would ~~make nonsubstantive changes to this provision~~ *enact additional restrictions on advertising practices that target senior citizens and would expand the scope of existing restrictions, currently applicable to disability insurance, to life insurance and annuity products. The bill would establish a presumption that the issuance and delivery of a deferred annuity product to a senior is unsuitable under*

certain conditions, and would require an issuer of annuities to develop a suitability plan for its agents to use in selling annuities. The bill would prohibit insurance agents, brokers, and solicitors who are not attorneys from sharing commissions or other compensation with attorneys. The bill would require specific training and continuing education for insurance agents, brokers, and representatives in order for these producers to sell annuities. The bill would revise the disclosure requirements applicable to the sale of life insurance and annuity products to seniors. The bill would impose restrictions on the sale of those products in the home of a senior citizen. The bill would prohibit an agent or insurer from recommending the unnecessary replacement, as defined, of an annuity by a senior citizen. The bill would impose certain duties on the Insurance Commissioner in this regard, and enact other related provisions.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~—yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 789 of the Insurance Code is amended~~
 2 SECTION 1. Section 787 of the Insurance Code is amended
 3 to read:
 4 787. Any advertisement or other device designed to produce
 5 leads based on a response from a potential insured which is
 6 directed towards persons age 65 or older shall disclose that an
 7 agent may contact the applicant if that is the fact. In addition, an
 8 agent who makes contact with a person as a result of acquiring that
 9 person's name from a lead generating device shall disclose that fact
 10 in the initial contact with the person.
 11 (a) No insurer, agent, broker, solicitor, or other person or other
 12 entity shall solicit persons age 65 and older in this state for the
 13 purchase of disability insurance, *life insurance, or annuities*
 14 through the use of a true or fictitious name which is deceptive or
 15 misleading with regard to the status, character, or proprietary or
 16 representative capacity of the entity or person, or to the true
 17 purpose of the advertisement.
 18 (b) For the purposes of this section, an advertisement includes
 19 envelopes, stationery, business cards, or other materials designed
 20 to describe and encourage the purchase of a policy or certificate of
 21 disability insurance.

(c) Advertisements shall not employ words, letters, initials, symbols, or other devices which are so similar to those used by governmental agencies, a nonprofit or charitable institution, senior organization, or other insurer that they could have the capacity or tendency to mislead the public. Examples of such misleading materials, include, but are not limited to, those which imply any of the following:

(1) The advertised coverages are somehow provided by or are endorsed by any governmental agencies, nonprofit or charitable institution or senior organizations.

(2) The advertiser is the same as, is connected with, or is endorsed by governmental agencies, nonprofit or charitable institutions or senior organizations.

(d) No advertisement may use the name of a state or political subdivision thereof in a policy name or description.

(e) No advertisement may use any name, service mark, slogan, symbol, or any device in any manner that implies that the insurer, or the policy or certificate advertised, or that any agency who may call upon the consumer in response to the advertisement, is connected with a governmental agency, such as the Social Security Administration.

(f) No advertisement may imply that the reader may lose a right, or privilege, or benefits under federal, state, or local law if he or she fails to respond to the advertisement.

(g) An insurer, agent, broker, or other entity may not use an address so as to mislead or deceive as to the true identity, location, or licensing status of the insurer, agent, broker, or other entity.

(h) No insurer may use, in the trade name of its insurance policy or certificate, any terminology or words so similar to the name of a governmental agency or governmental program as to have the capacity or the tendency to confuse, deceive, or mislead a prospective purchaser.

(i) All advertisements used by agents, producers, brokers, solicitors, or other persons for a policy of an insurer shall have written approval of the insurer before they may be used.

(j) No insurer, agent, broker, or other entity may solicit a particular class by use of advertisements which state or imply that the occupational or other status as members of the class entitles them to reduced rates on a group or other basis when, in fact, the

1 policy or certificate being advertised is sold on an individual basis
2 at regular rates.

3 *(k) No advertisement for an event designed to promote the sale*
4 *of insurance products or settlements or to produce leads for future*
5 *sales of insurance products or settlements may use the terms*
6 *“seminar,” “class,” “informational meeting,” or substantially*
7 *equivalent terms to characterize the purpose of the public*
8 *gathering or event unless it adds the words “and sales*
9 *presentation” immediately following those terms in the same font*
10 *as those terms.*

11 *(l) No agent, broker, solicitor, or other person or entity may use*
12 *a professional designation unless that designation is conferred by*
13 *an accredited college or university or conferred by a long-standing*
14 *professional trade association that is nonprofit and not controlled*
15 *by founding individuals.*

16 SEC. 2. Section 789.9 is added to the Insurance Code, to read:

17 789.9. (a) Insurers owe a special duty of suitability to seniors
18 65 years and older who apply for or own annuity products.

19 (b) The commissioner shall presume the issuance and delivery
20 of a deferred annuity product to a senior is unsuitable and a
21 violation of this article unless the insurer is able to demonstrate the
22 suitability of the product for the individual insured.

23 (c) If the senior’s purpose in purchasing the deferred annuity is
24 to affect Medi-Cal eligibility, the issuance shall be unsuitable if the
25 purchaser’s assets are equal to or less than the community spouse
26 resource allowance.

27 SEC. 3. Section 789.10 is added to the Insurance Code, to
28 read:

29 789.10. (a) Each issuer of annuities shall develop a
30 suitability plan applicable to seniors 65 years of age and older, and
31 train its agents to use this plan.

32 (b) The plan shall utilize criteria, including, but not limited to
33 the following: the age of purchaser, insured, or annuitant; his or
34 her competence to contract; his or her purpose in purchasing the
35 annuity product; the likelihood the senior will need access to cash
36 for future needs such as health care, long-term care, or other
37 emergencies; the likelihood that those needs may occur during the
38 deferment period; and the likelihood the senior may need access
39 to the annuitized funds to meet those needs.

1 (c) Each insurer who receives an application from a senior for
2 a deferred annuity shall, before issuing the contract, mail the
3 applicant a supplemental application requesting information
4 necessary to make the determination of suitability. The
5 supplemental application may be sent to the applicant at the same
6 time as the disclosure required by Section 10127.10.

7 (d) Each insurer shall develop and provide to all agents and
8 other insurer representatives authorized to solicit individual
9 consumers for the sale of annuities, a checklist, screening device,
10 or other procedure to ensure that prospective clients have the
11 mental capacity to enter into a contract.

12 (e) The issuer, and if an agent is involved, the agent, shall
13 document why an annuity which is presumptively unsuitable for a
14 purchaser was sold, and forward all documentation to the
15 commissioner.

16 (f) Every insurer or entity marketing annuities shall establish
17 auditable procedures for verifying compliance with this section. In
18 addition to other remedies available in this article, code, and in
19 California law, the commissioner, upon a finding of unsuitability,
20 shall order the insurer to rescind the contract and to refund the
21 premium, including all fees and costs. An additional
22 administrative penalty equal to half the deposit amount may be
23 ordered by the commissioner or by a court in actions brought under
24 subdivision (e) of Section 789.

25 SEC. 4. Section 1724 is added to the Insurance Code, to read:
26 1724. An agent, broker, or solicitor who is not an active
27 member of the State Bar of California may not share a commission
28 or other compensation with an active member of the State Bar of
29 California. For purposes of this section, "commission or other
30 compensation" means pecuniary or nonpecuniary compensation
31 of any kind relating to the sale or renewal of an insurance policy
32 or certificate or an annuity, including, but not limited to, a bonus,
33 gift, prize, award, or finder's fee.

34 SEC. 5. Section 1749.8 is added to the Insurance Code, to
35 read:

36 1749.8. (a) Every insurance agent, broker, or insurer
37 representative licensed for the sale of annuities shall satisfactorily
38 complete eight hours of training prior to soliciting individual
39 consumers in order to sell annuities.

1 (b) Every insurance agent, broker, or insurer representative
2 licensed for the sale of annuities shall satisfactorily complete four
3 hours of continuing education every two years prior to license
4 renewal. This requirement shall be part of, and not in addition to,
5 the continuing education requirements of Section 1749.3.

6 (c) The training and continuing education required by this
7 section shall consist of topics related to annuities, and California
8 law, regulations, and requirements related to annuities, prohibited
9 sales practices, and fraudulent and unfair trade practices. Subject
10 matter determined by the commissioner to be primarily intended
11 to promote the sale or marketing of annuities shall not qualify for
12 credit towards the training and continuing education requirement.
13 Any course or seminar that is disapproved under the provisions of
14 this section shall be presumed invalid for credit towards the
15 training and continuing education requirement of this section
16 unless it is approved in writing by the commissioner. That approval
17 shall be subject to annual renewal.

18 SEC. 6. Section 10127.10 of the Insurance Code is amended
19 to read:

20 10127.10. (a) Every policy of individual life insurance and
21 every individual annuity contract that is initially delivered or
22 issued for delivery to a senior citizen in this state on and after
23 January 1, ~~1995~~ 2004, shall have printed thereon or attached
24 thereto a notice stating that, after receipt of the policy by the owner,
25 the policy may be returned by the owner for cancellation by
26 delivering it or mailing it to the insurer or agent from whom it was
27 purchased. The period of time set forth by the insurer for return of
28 the policy by the insured shall be clearly stated on the notice and
29 this period shall be not less than 30 days. The insured may return
30 the policy to the insurer by mail or otherwise at any time during
31 the period specified in the notice. In the case of individual life
32 insurance policies and individual annuity contracts (other than
33 *certain* variable contracts and modified guaranteed contracts),
34 return of the policy during the cancellation period shall have the
35 effect of voiding the policy from the beginning, and the parties
36 shall be in the same position as if no policy had been issued. All
37 premiums paid and any policy fee paid for the policy shall be
38 refunded by the insurer to the owner within 30 days from the date
39 that the insurer is notified that the owner has canceled the policy.
40 In the case of variable annuity contracts, variable life insurance

contracts, and modified guaranteed contracts, ~~return~~, the premium shall not be invested until after the expiration of the 30-day cancellation period. Return of the contract during the cancellation period shall void the policy from the beginning, and the parties shall be in the same position as if no policy had been issued, unless the insured knowingly signed a written waiver allowing the premium to be invested during the 30-day cancellation period. After executing a valid waiver, cancellation during the 30-day period shall entitle the owner to a refund of account value and any policy fee paid for the policy. The account value *or premium* and policy fee shall be refunded by the insurer to the owner within 30 days from the date that the insurer is notified that the owner has canceled the policy.

(b) This section applies to all individual policies issued or delivered to senior citizens in this state on or after January 1, ~~1995~~ 2004. All policies subject to this section which are in effect on January 1, ~~1994~~ 2003, shall be construed to be in compliance with this section, and any provision in any policy which is in conflict with this section shall be of no force or effect.

(c) Every individual life insurance policy and every individual annuity contract, other than variable contracts and modified guaranteed contracts, subject to this section, that is delivered or issued for delivery in this state shall have the following notice either printed on the cover page or policy jacket in 12-point bold print with one inch of space on all sides or printed on a sticker that is affixed to the cover page or policy jacket:

“IMPORTANT

YOU HAVE PURCHASED A LIFE INSURANCE POLICY OR ANNUITY CONTRACT. CAREFULLY REVIEW IT FOR LIMITATIONS.

THIS POLICY MAY BE RETURNED WITHIN 30 DAYS FROM THE DATE YOU RECEIVED IT FOR A FULL REFUND BY RETURNING IT TO THE INSURANCE COMPANY OR AGENT WHO SOLD YOU THIS POLICY. AFTER 30 DAYS, CANCELLATION MAY RESULT IN A SUBSTANTIAL PENALTY, KNOWN AS A SURRENDER

1 CHARGE.”

2

3 The phrase “after 30 days, cancellation may result in a
4 substantial penalty, known as a surrender charge” may be deleted
5 if the policy does not contain those charges or penalties.

6 (d) Every individual variable annuity contract, variable life
7 insurance contract, or modified guaranteed contract subject to this
8 section, that is delivered or issued for delivery in this state, shall
9 have the following notice either printed on the cover page or policy
10 jacket in 12-point bold print with one inch of space on all sides or
11 printed on a sticker that is affixed to the cover page or policy
12 jacket:

13

14

“IMPORTANT

15

16 YOU HAVE PURCHASED A VARIABLE ANNUITY
17 CONTRACT (VARIABLE LIFE INSURANCE CONTRACT,
18 OR MODIFIED GUARANTEED CONTRACT). CAREFULLY
19 REVIEW IT FOR LIMITATIONS.

20

21 THIS POLICY MAY BE RETURNED WITHIN 30 DAYS
22 FROM THE DATE YOU RECEIVED IT FOR A REFUND OF
23 THE POLICY’S ACCOUNT VALUE ON THE DAY THE
24 POLICY IS RECEIVED BY THE INSURANCE COMPANY OR
25 AGENT WHO SOLD YOU THIS POLICY. A RETURN OF THE
26 POLICY AFTER 30 DAYS MAY RESULT IN A
27 SUBSTANTIAL PENALTY, KNOWN AS A SURRENDER
28 CHARGE.”

29

30 The words “known as a surrender charge” may be deleted if the
31 contract does not contain those charges.

32 (e) This section does not apply to life insurance policies issued
33 in connection with a credit transaction or issued under a
34 contractual policy-change or conversion privilege provision
35 contained in a policy. Additionally, this section shall not apply to
36 contributory and noncontributory employer group life insurance,
37 contributory and noncontributory employer group annuity
38 contracts, and group term life insurance, with the exception of
39 subdivision (f).



(f) When an insurer, its agent, group master policyowner, or association collects more than one month's premium from a senior citizen at the time of application or at the time of delivery of a group term life insurance policy or certificate, the insurer must provide the senior citizen a prorated refund of the premium if the senior citizen delivers a cancellation request to the insurer during the first 30 days of the policy period.

(g) For purposes of this chapter, a senior citizen means an individual who is 60 years of age or older on the date of purchase of the policy.

SEC. 7. Section 10127.13 of the Insurance Code is amended to read:

~~10127.13. All individual life insurance policies and individual annuity contracts for senior citizens that contain a surrender charge period. Prior to the sale of any life insurance policy or annuity contract to a senior citizen, or the replacement of any life insurance policy or annuity contract held by a senior citizen, the life insurer and life agent shall either disclose the surrender period and, all associated penalties, and the length of the deferral period, if any, in 12-point bold print on the cover sheet of the policy or disclose the location of the surrender information in bold 12-point print on the cover page of the policy, or printed on a sticker that is affixed to the cover page or to the policy jacket. The notice required by this section may appear on a cover sheet that also contains the disclosure required by subdivision (d) of Section 10127.10.~~

SEC. 8. Section 10127.17 is added to the Insurance Code, to read:

10127.17. (a) In addition to the disclosure required pursuant to Section 10127.10, every policy of life insurance and every annuity that is proposed to be sold and issued to a senior citizen shall be accompanied by a one-page outline disclosure, to be completed by the agent and presented to the purchaser, consisting of the following information:

(1) Relevant information about any surrender charges that would be paid by the purchaser if the purchaser were to replace or revoke the insurance contract before its maturity, including, but not limited to, the amount, whether the charge is incurred at the death of the annuitant or at some other time, and if there is an annual surrender charge-free withdrawal available.

1 (2) *The length of the deferral period, if any.*

2 (3) *The fact that the agent will receive a payment or*
3 *commission from the insurer issuing the policy, if that is the case,*
4 *and a statement that the amount of the payment or commission may*
5 *be affected by the price of the policy and the length of the deferral*
6 *period, if any.*

7 (4) *The fact that the sale or liquidation of any stock, bond, IRA,*
8 *certificate of deposit, mutual fund, annuity, or other asset to fund*
9 *the purchase of the product may have tax consequences, result in*
10 *early withdrawal penalties, or result in other costs or penalties as*
11 *a result of the sale or liquidation.*

12 (5) *A statement that the applicant should consult with an*
13 *independent advisor other than an insurance representative, such*
14 *as an attorney, accountant, or other professional, regarding the*
15 *legal and tax consequences of purchasing the annuity or using the*
16 *annuity to qualify for programs such as Medi-Cal.*

17 (6) *The right to return the policy within 30 days of its issuance*
18 *for a full refund.*

19 (7) *A statement that if the applicant has an existing annuity,*
20 *that he or she should contact the issuer of that annuity or the*
21 *applicable agent for an explanation of the surrender charges and*
22 *the ramifications of surrendering the existing annuity.*

23 (b) *The senior citizen receiving the one-page outline disclosure*
24 *shall acknowledge receipt of the document by signing a copy and*
25 *returning it to the agent.*

26 SEC. 9. *Section 10127.18 is added to the Insurance Code, to*
27 *read:*

28 10127.18. (a) *This section applies to the sale or offering for*
29 *sale of life insurance policies and annuities.*

30 (b) *An insurer, agent, or broker is required to deliver a notice*
31 *in writing to all clients and prospective clients 65 years of age or*
32 *older with whom a meeting is scheduled. The notice shall be*
33 *delivered no less than 24 hours before the meeting is scheduled to*
34 *begin. The notice shall include all of the following information:*

35 (1) *The right of the client or prospective client to terminate the*
36 *meeting at any time.*

37 (2) *The right of the client or prospective client to have other*
38 *persons present at the meeting, including family members,*
39 *financial advisors, or attorneys.*

1 (3) *The right of the client or prospective client to contact the*
2 *Department of Insurance or the Department of Corporations for*
3 *information or to make a complaint, with the notice to include the*
4 *telephone numbers for the consumer complaint lines for those*
5 *departments.*

6 (c) *Upon contacting a client or prospective client who is 65*
7 *years of age or older at his or her home, an insurer, agent, or broker*
8 *shall, before making any other statement except a greeting, or*
9 *asking the client or prospective client any other questions, state*
10 *that the purpose of the contact is to effect a sale, and state all of*
11 *the following information:*

12 (1) *The identity of the person making the solicitation.*

13 (2) *The name of the insurer, broker, or agent making the*
14 *solicitation or represented by the person making the solicitation.*

15 (3) *That a life insurance policy or an annuity may be offered for*
16 *sale.*

17 (d) *The agent or assistants of life agents shall, in addition to*
18 *meeting the requirements of paragraphs (1), (2), and (3) of*
19 *subdivision (c), show or display identification that states the*
20 *information required by those paragraphs as well as the address*
21 *of the place of business and the insurance license number of the*
22 *licensee.*

23 (e) *An insurer, agent, or broker shall leave the home of a client*
24 *or prospective client as soon as reasonably possible after being*
25 *asked to leave by the client or prospective client.*

26 (f) *An insurer, agent, or broker may not solicit a sale or order*
27 *for the sale of an annuity or life insurance policy at the residence*
28 *of a client or prospective client, in person or by telephone, by using*
29 *any plan, scheme, or ruse that misrepresents the true status or*
30 *mission of the contact.*

31 (g) *An insurer, agent, or broker has an affirmative duty to verify*
32 *that the client or prospective client has the capacity to enter into*
33 *a contract, and shall terminate any meeting in which the client's*
34 *or prospective client's capacity to enter into a contract is not clear.*

35 (h) *The provisions of this section also apply to individuals who*
36 *are not insurers, agents, or brokers but who facilitate, arrange, or*
37 *participate in the sales presentation of an annuity or life insurance*
38 *policy and receive any money, gift, value, or other consideration*
39 *from the insurer, broker, or agent for the services rendered to assist*
40 *in the sales presentation.*

1 *SEC. 10. Section 10509.8 of the Insurance Code is amended*
2 *to read:*

3 10509.8. (a) A violation of this article shall occur if an agent
4 or insurer recommends the replacement or conservation of an
5 existing policy by use of a materially inaccurate presentation or
6 comparison of an existing contract's premiums and benefits or
7 dividends and values, if any, *or recommends that an insured 65*
8 *years of age or older purchase an unnecessary replacement*
9 *annuity.*

10 (b) *For purposes of this section, "unnecessary replacement"*
11 *means the sale of an annuity to replace an existing annuity that*
12 *requires that the insured will pay a surrender charge for the*
13 *annuity that is being replaced and that does not confer a*
14 *substantial financial benefit to the purchaser so that a reasonable*
15 *person would believe that the purchase is unnecessary.*

16 (c) Patterns of action by policyowners who purchase
17 replacement policies from the same agent after indicating on
18 applications that replacement is not involved, shall constitute a
19 rebuttable presumption of the agent's knowledge that replacement
20 was intended in connection with the sale of those policies, and such
21 patterns of action shall constitute a rebuttable presumption of the
22 agent's intent to violate this article.

23 ~~(e)~~

24 (d) This article does not prohibit the use of additional material
25 other than that which is required that is not in violation of this
26 article or any other statute or regulation.

27 ~~to read:~~

28 ~~789. (a) The commissioner shall have the administrative~~
29 ~~authority to assess penalties against insurers, brokers, agents, and~~
30 ~~other entities engaged in the transaction of insurance or against any~~
31 ~~other person or entity for violating this article.~~

32 ~~(b) Upon a showing of a violation of this article in any civil~~
33 ~~action, a court may also assess the penalties prescribed in this~~
34 ~~chapter.~~

35 ~~(c) If the commissioner has reasonable cause to believe or~~
36 ~~determines after a public hearing that any insurer, agent, broker,~~
37 ~~or other person or entity engaged in the transaction of insurance~~
38 ~~has violated this article, the commissioner shall make and serve~~
39 ~~upon the insurer, broker, agent, or other person or entity a notice~~
40 ~~of hearing. The notice shall state the commissioner's intent to~~

1 ~~assess the administrative penalties, the time and place of the~~
2 ~~hearing, and the conduct, condition, or ground upon which the~~
3 ~~commissioner is holding the hearing and assessing the penalties.~~
4 ~~The hearing shall occur within 30 days after the notice is served.~~
5 ~~Within 30 days after the hearing, the commissioner shall issue an~~
6 ~~order specifying the amount of the penalties to be paid. The~~
7 ~~penalties resulting from the hearing shall be paid to the Insurance~~
8 ~~Fund.~~

9 ~~(d) The powers vested in the commissioner by this section shall~~
10 ~~be in addition to any and all powers and remedies vested in the~~
11 ~~commissioner by law.~~

12 ~~(e) Actions for injunctive relief, penalties specified in Section~~
13 ~~789.3, damages, restitution, and all other remedies in law, may be~~
14 ~~brought in superior court by the Attorney General, district~~
15 ~~attorney, or city attorney on behalf of the people of California. The~~
16 ~~court shall award reasonable attorney's fees and court costs to the~~
17 ~~prevailing plaintiff who establishes a violation of this article.~~